

<b>Finance and Administration Cabinet STANDARD PROCEDURE</b>		<b>ISSUED BY:</b> Executive Management; Office of Equal Employment Opportunity and Contract Compliance (EEO/CC)
<b>PROCEDURE #3.3</b>	<b>SUBJECT:</b> Sexual Harassment	
<b>EFFECTIVE DATE:</b> 3/3/05, 11/20/14		
<b>CONTACT:</b> Executive Director (EEO/CC)		<b>LOCATION:</b> Capitol Annex, Room 395 <b>PHONE:</b> (502) 564-2874

## STATEMENT OF AUTHORITY

1. The Finance and Administration Cabinet's Standard Procedures Manual establishes standard mandatory internal procedures cabinet-wide. These procedures are established in accordance with the Secretary's statutory authority under KRS 42.014 and KRS 12.270 to establish the internal organization and functions of the Cabinet as necessary to perform the duties effectively.
2. The Standard Procedures Manual may only be revised in accordance with the process outlined in Standard Procedure #1.1 entitled: "Finance Standard Procedures and Manual".

## I. PURPOSE

The Finance and Administration Cabinet (Cabinet) recognizes its responsibility to abide by state and federal civil rights laws and [Executive Order 2013-841](#). The purpose of this procedure is to establish that the Cabinet prohibits sexual harassment either by or of its employees. Sexual harassment is a prohibited personnel practice and a violation of state and federal law.

The Cabinet shall maintain a positive, non-hostile work environment where all employees are safe to report sexual harassment without fear of retaliation. This policy applies to all employment actions, including, but not limited to: recruiting, hiring, transfers, layoffs, classification/compensation, benefits, promotions, reinstatement and educational programs.

## II. DEFINITIONS

"Complainant" means the person who files the Equal Employment Opportunity (EEO) complaint.

"Discrimination" means unequal treatment of a class of persons. Further, discrimination involves treating one (1) person unfairly over another according to factors unrelated to his/her ability or potential.

"Hostile Work Environment" means any discriminatory actions, communications or conduct that are "so severe or pervasive, that it creates a work environment that a reasonable person would consider intimidating, hostile or abusive."

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“Retaliation” means any negative or adverse action based upon the filing of or participation in the investigation of a complaint of discrimination or harassment. The law forbids retaliation when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, transfers or lateral moves, layoffs, training, benefits, and any other terms or conditions of employment.

“Respondent” means the person accused of discrimination, harassment or retaliation.

“Sexual Harassment” means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature which affects an individual’s employment, unreasonably interferes with an individual’s work performance, and/or creates an intimidating, hostile or offensive work environment.

According to the U.S. Equal Employment Opportunity Commission (EEOC), sexual harassment can occur in a variety of circumstances within the workplace, including, but not limited to the following:

1. The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.
2. The harasser can be the victim’s supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
3. The victim does not have to be the person harassed, but could be anyone affected by the offensive conduct.
4. Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
5. The harasser’s conduct must be unwelcome.

### **III. PROHIBITED ACTIVITIES**

The EEOC advises, “Although the law doesn’t prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).”

Examples of sexual harassment within the workplace that shall not be tolerated, include, but

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are not limited to:

1. Commenting about a person's attire, personal romantic relationships, or body;
2. Spreading rumors about a person's personal relationships or sexual lifestyle;
3. Using sexually explicit slurs or nickname;
4. Requesting sexual favors or dates;
5. Repeatedly asking a person to socialize during off-duty hours when the person has said "No" or has indicated that he/she is not interested;
6. Making sexually charged jokes or innuendos;
7. Giving gifts to or leaving gifts of a sexual nature for someone within the workplace;
8. Physically impeding or blocking someone, inappropriate touching or intentionally brushing up against someone;
9. Displaying or sharing screensavers, photos, posters, cartoons, drawings, emails or notes of a sexual nature;
10. Asking questions about a person's sexual experiences or sexual orientation;
11. Staring, ogling and gesturing in a sexually offensive manner; and
12. Making offensive remarks about a person's sex, sexual orientation, or gender identity.

#### IV. PROCEDURE

- A. Reporting Allegations of Sexual Harassment - Any employee or job applicant who believes he/she is a victim of sexual harassment at work by supervisors, managers, co-workers, contract employees, visitors, vendors, or customers, should report the incident as soon as possible and complete a EEO Complaint form.

Employees should file a complaint through:

- the [Cabinet EEO Coordinator](#);

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- the [agency EEO counselor](#); or
- a manager or supervisor.

Employees may also pursue complaints through the [State EEO Coordinator](#), the [Kentucky Personnel Board](#), the [Kentucky Commission on Human Rights](#), or the [federal EEOC](#).

- B. Complaint Investigations - The Office of Equal Employment Opportunity and Contract Compliance (EEO/CC) shall investigate all complaints. Once an employee files a complaint, an investigation begins. This investigation shall include, but is not limited to, interviews with all relevant persons including the complainant, the respondent, and other potential witnesses.

To the extent possible, the privacy of the complainant and the respondent shall be kept confidential. Information concerning the complaint shall not be released to third parties or anyone who is not involved with the investigation under the Open Records Act. Nor shall anyone involved be permitted to discuss the subject outside the investigation.

At the conclusion of an investigation, both the complainant and the respondent will be notified of the investigation findings. If warranted, disciplinary action(s) and/or corrective action(s) may occur.

- C. Withdrawing a Complaint – To withdraw a complaint of discrimination, harassment or retaliation, the complainant must submit an EEO Complaint Withdrawal form and state the reasons for the request to withdraw the complaint. The EEO Complaint Withdrawal form must be submitted to the Cabinet EEO Coordinator.

Once the EEO Complaint Withdrawal form is received, the Cabinet EEO Coordinator, prior to making the determination to end an investigation, must consider whether evidence has been found that may lead to the conclusion that the Cabinet has an obligation to continue the investigation.

In either event, the Cabinet EEO Coordinator shall notify the complainant and respondent in writing that the complainant has withdrawn the complaint. The notice will include information regarding whether the investigation has been terminated or is continuing.

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- D. Any employee who does not feel comfortable filing a complaint of sexual harassment through a manager or supervisor or through their agency EEO counselor should contact the Cabinet EEO Coordinator.

## **V. RESPONSIBILITIES**

### **A. Manager/Supervisor shall:**

1. Ensure dissemination of this procedure and EEO forms to employees without Internet or e-mail access.
2. Notify the Office of EEO/CC when:
  - a. The manager/supervisor witnesses or becomes aware of potential sexual harassment;
  - b. An employee files a sexual harassment complaint; and/or
  - c. Any employee makes an allegation of sexual harassment.

### **B. Cabinet EEO Coordinator within the Office of EEO/CC shall:**

1. Investigate complaints or suspicions of sexual harassment.

### **C. Agency EEO counselors shall:**

1. Notify the Cabinet EEO Coordinator when a sexual harassment complaint is received.

### **D. Cabinet employees shall:**

1. Avoid engaging in offensive or inappropriate behavior at work to ensure a workplace that is free from harassment, discrimination and retaliation at all times.
2. Report any instances of sexual harassment at work by anyone including managers, supervisors, co-workers, contract employees, visitors, vendors or customers.
3. Take Anti-Harassment training courses as required by the Cabinet's Affirmative Action Plan.

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## VI. TRAINING

Anti-Harassment and Diversity training through the Kentucky Personnel Cabinet is required for all Cabinet employees.

- A. New employees must take Anti-Harassment training within the first ninety (90) days of employment with the Cabinet.
- B. All employees must take one (1) course every two (2) years, alternating subjects, so that both Anti-Harassment and Diversity training are completed within a four (4) year time frame.

## VII. DISCIPLINARY AND CORRECTIVE ACTIONS FOR VIOLATIONS

Any Cabinet employee determined to have refused to abide by or to have violated the sexual harassment procedures shall be subject to disciplinary action, including, but not limited to reprimand, fine, demotion, suspension and dismissal.

Employees who participate in good faith in sexual harassment investigations are protected under the EEO laws from retaliation; however, an employee may be disciplined for knowingly and maliciously providing false information during a sexual harassment investigation.

## VIII. FILING DEADLINES

- A. Employees must file complaints within thirty (30) days of the occurrence or knowledge of an incident of harassment, discrimination or retaliation.
- B. The State EEO Coordinator, the Kentucky Personnel Board, the Kentucky Commission on Human Rights, and the federal EEOC have established their own filing deadlines. Employees should contact these agencies for additional information.

## IX. FORMS

[Form SP7.300011: EEO Complaint Form](#)

[Form SP7.300012: EEO Complaint Withdrawal Form](#)

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## X. REFERENCES

[Executive Branch Affirmative Action Plan](#)

[Facts about Sexual Harassment – EEOC](#)

[Finance and Administration Cabinet Affirmative Action Plan](#)

[Finance and Administration Cabinet Standard Procedure #3.1 EEO](#)

[Laws, Regulations & Guidance - EEOC](#)